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in an earlier decision [16] the court, in holding it error to let in evidence that the accused made no defense on his preliminary examination, adopted what is submitted to be the view more consonant with the purpose of these statutes.

THE STATUS OF A CROPPER. — A decision [1] involving the California Land Law [2] raises the much vexed problem of the cropper. When there is an agreement by the owner of land with a laborer, by which the latter is to work the land for a specified portion of the crop, the parties are generally held to stand to each other in any of three [3] relations: (1) owner and cropper, (2) landlord and tenant, (3) tenants in common of the crop.

The intention of the parties determines the status created by their agreement.[4] In the absence of an expressed intent courts are aided by various considerations of fact.[5] If the laborer enters upon the land merely to cultivate it, and lives elsewhere, he is obviously a cropper.[6] If he lives on the land in exclusive possession,[7] or if the agreement of the parties contains such words as, "rent," "lease," "demise," etc.,[8] although neither of these tests is conclusive,[9] most courts regard him as a tenant. Where each supplies part of the agricultural material, and the cultivator lives on the land, they are usually held to be tenants in common of the crop, whatever may be their relation as to the land.[10] Ever since an Elizabethan case,[11] the time for which the contract is to continue has also been an important factor, the tendency being to construe the agreement to be a lease if it calls for more than a year's work.[12] To protect the owner's in-

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[16] Templeton *v.* People, *supra.*

[1] O'Brien *v.* Webb, 279 Fed. 117 (N. D. Cal., 1922). For the facts of this case see RECENT CASES, *infra*, p. 225.

[2] See 1921 CAL. STAT. 83.

[3] The courts have consistently refused to construe these agreements as partnerships. Gardenshire *v.* Smith, 39 Ark. 280 (1882); Romero *v.* Dalton, 2 Ariz. 210 (1886). See PARSONS, PARTNERSHIP, 4 ed., § 61, note. See 1905 N. C. CODE REV., § 1982.

[4] Alwood *v.* Ruckman, 221 Ill. 200 (1858); Orcutt *v.* Moore, 134 Mass. 48 (1883); Birmingham *v.* Rogers, 46 Ark. 254 (1885).

[5] If the contract is oral, the intent is to be determined by the jury. Williams *v.* Cleaver, 4 Houst. (Del.) 453 (1855); Warner *v.* Abbey, 112 Mass. 355 (1873). If written, by the court. Orcutt *v.* Moore, *supra*; Reed *v.* McRill, 41 Neb. 206, 57 N. W. 775 (1894).

[6] Warner *v.* Hoisington, 42 Vt. 94 (1869).

[7] Dixon *v.* Niccoll, 39 Ill. 372 (1866); Steel *v.* Frick, 56 Pa. St. 172 (1867); Cornell *v.* Dean, 105 Mass. 435 (1870); Rowlands *v.* Voechting, 115 Wis. 352, 91 N. W. 990 (1902).

[8] Clarke *v.* Cobb, 121 Cal. 595, 54 Pac. 74 (1898); Mundy *v.* Warner, 61 N. J. L. 395, 39 Atl. 697 (1898).

[9] As to possession see Strain *v.* Gardner, 61 Wis. 174, 21 N. W. 35 (1885); Reeves *v.* Hannan, 65 N. J. L. 249, 48 Atl. 1018 (1900). As to wording see Griswold *v.* Cook, 46 Conn. 198 (1878); Harrison *v.* Ricks, 71 N. C. 7 (1874).

[10] Putnam *v.* Wise, 1 Hill (N. Y.), 234 (1841); Guest *v.* Opdyke, 31 N. J. L. 552 (1864); Schlict *v.* Callicott, 76 Miss. 487, 24 So. 869 (1898).

[11] Hare *v.* Celey, Cro. Eliz. 143.

[12] Herskell *v.* Bushnell, 37 Conn. 36 (1871); Harris *v.* Frink, 49 N. Y. 24

terest, wherever the landlord's lien obtains, there is a desire to call the agreement a lease;[13] otherwise, a cropper's contract.[14]

If the laborer is a true cropper the rights and liabilities of both parties are purely contractual.[15] The cropper has no interest in the land or crop, his share of the latter being merely wages. It is not wholly safe, however, to consider the relation of the parties as that of master and servant, as there is authority for what seems the better view that the cropper is an independent contractor, and that the owner is not liable for his acts.[16] Whenever the court treats the laborer as a tenant, he clearly owns the crop before division. To avoid the hardship to the landlord some courts have taken the illogical position that he has a mortgageable interest in the crop before division.[17] Other authorities allow exception of the owner's moiety,[18] although the common law rule as to the impossibility of a reservation in a grant has curtailed the wider adoption of this method.[19]

To protect the rights of both parties in the undivided crop, and to prevent attachment of it by the creditors of the landlord, if the laborer be a cropper,[20] or those of the tenant, if the agreement has been held a lease,[21] there is a tendency to apply the doctrine of a co-tenancy in the crop.[22] It is quite possible for this relation to exist whatever the situation as to the land under the contract.[23] There are merely *dicta* to the effect that such a co-tenancy of the

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(1872). But this view has been vigorously criticized. Woodruff *v.* Adams, 5 Blackf. (Ind.) 317 (1845). Aiken *v.* Smith, 21 Vt. 172 (1849).

[13] Birmingham *v.* Rogers, *supra.*

[14] Guest *v.* Opdyke, *supra*; Delaney *v.* Root, 99 Mass. 546 (1868).

[15] Appling *v.* Odom, 46 Ga. 583 (1872); Warner *v.* Abbey, *supra*; Orcutt *v.* Moore, *supra.*

[16] Duncan *v.* Anderson, 56 Ga. 398 (1876); Ferguson *v.* Hubbell, 97 N. Y. 507 (1884). *Contra*, Huff *v.* Watkins, 15 S. C. 82 (1880).

[17] Riddle *v.* Dow, 98 Ia. 7, 66 N. W. 1066 (1896), citing Potts *v.* Newell, 22 Minn. 561 (1876).

[18] Moulton *v.* Robinson, 27 N. H. 550 (1853).

[19] Ross *v.* Swaringen, 9 Ired. (N. C.) 481 (1848), citing Co. Litt. 142. As to whether the tenant must use diligence in raising the crop see Wheat *v.* Watson, 57 Ala. 581 (1877); Cammack *v.* Rogers, 96 Tex. 457, 73 S. W. 795 (1903). *Contra*, Patton *v.* Garrett, 37 Ark. 605 (1881); Patterson *v.* Hawkins, 71 Tenn. 483 (1879).

[20] Chandler *v.* Thurston, 27 Mass. 205 (1830).

[21] Ream *v.* Harnish, 45 Pa. St. 376 (1863). See 1905 Kan. Gen. Stat., § 5834; 1906 Ohio Ann. Stat., § 6679; 1907 Neb. Ann. Stat., § 2018; 1895 Ga. Code, § 3127, all providing for protection of either party's interest in the crop upon attachment against the other.

[22] Lanyon *v.* Woodward, 55 Wis. 652, 13 N. W. 863 (1882); Bowers *v.* Graves, 8 S. D. 385, 66 N. W. 931 (1896).

[23] There was a tenancy in the land in Connell *v.* Richmond, 55 Conn. 401, 11 Atl. 852 (1887); Jones *v.* Durrer, 96 Cal. 95, 30 Pac. 1027 (1892); Sowles *v.* Martin, 76 Vt. 180, 56 Atl. 979 (1902). In Moore *v.* Spruill, 13 Ired. (N. C.) 55 (1851), a joint tenancy of the crops existed, the court giving all to the survivor. In Reynolds *v.* Reynolds, 48 Hun (N. Y.) 142 (1886); Wood *v.* Noack, 84 Wis. 398, 54 N. W. 785 (1893), the cropper recovered his share of the crop *in rem* after the landlord's breach of the contract, proving that there must have been a co-tenancy. In Alabama the question whether there is a lease or a mere contract depends on whether the landlord or the laborer supplies the team. See 1907 Ala. Code, §§ 4742, 4743.

crops will produce a co-tenancy in the land.[24] Thus, although one be a tenant of the land, the court may hold him a tenant in common of the crop, or (where exceptions are allowed) may give him no interest in the landlord's share of the crop; and although one be a mere cropper as to the land, he may yet enjoy a tenancy in common of the crop.

As it is thus possible to defeat the purpose of the Land Law by a technicality,[25] certain Pacific coast jurisdictions may find it necessary to pass legislation limiting the time of a cropper's term and the nature of his possession. Elsewhere the law on the subject, though in irreconcilable confusion, has fairly crystallized in each state. If a solution is desired, a statute like that of North Carolina will answer the purpose.[26]

PUBLIC CONVENIENCE AND INJUNCTIONS AGAINST TORTS. — An Alabama decision [1] raised the disputed question whether a court may, in its discretion, withhold equitable protection to an interest which it would guard to the best of its ability in an action for legal relief, when its only reason for so doing is a balance of immediate public convenience. The court enjoined a railroad from continuing to confiscate, with compensation, a quantity of a shipper's coal, alleged to be necessary to keep trains in operation during a coal strike.

Three situations must be distinguished. (1) Clearly, courts will weigh the convenience of granting or refusing temporary relief.[2] (2) Courts will not, at the expense of more important interests, issue injunctions to protect "legal rights" of no considerable value.[3]

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[24] Harrower *v.* Heath, 19 Barb. (N. Y.) 331 (1855); Wells *v.* Hollenbeck, 37 Mich. 504 (1877) (*semble*). The point is discussed in Aiken *v.* Smith, *supra*. All the resulting difficulties as to enforcement of rights between the tenants in common before division and during and after delivery, and between each or both of them and third persons are incidental to the law of common property and have no place in the present discussion. See 2 TIFFANY, LANDLORD AND TENANT, 1665.

[25] The object of the contract in the principal case was clearly to allow the alien all the privileges of a tenant for years, while preserving in form the appearance of a cropper's agreement.

[26] State *v.* Austen, 123 N. C. 749, 31 S. E. 731 (1899), decided under 1905 N. C. CODE, § 1993, where it is provided that all crops raised by a tenant or cropper, in the absence of any contrary agreement, shall be vested in the landlord until payment has been made of rent or advances. See also 1911 GA. CODE, § 3705.

[1] Mobile & Ohio R. R. Co. *v.* Zimmern, 89 So., 206 Ala. 37, 89 So. 475, (1921). For the facts of this case, see RECENT CASES, *infra*, p. 223. For discussions of the same decision, see 31 YALE L. J. 330; 16 A. L. R. 1352.

[2] Beidenkopf *v.* Des Moines Life Ins. Co., 160 Ia. 629, 142 N. W. 434 (1913); Jones *v.* Lassiter, 169 N. C. 750, 86 S. E. 710 (1915).

[3] McCann *v.* Chasm Power Co., 211 N. Y. 301, 105 N. E. 416 (1914); Frost *v.* Los Angeles, 181 Cal. 22, 183 Pac. 342 (1919). Similarly, when there is an appropriation by a public utility with power of eminent domain to condemn what is appropriated, an injunction should be denied, on the giving of security to pay the value of the property. See Zechariah Chafee, Jr., "The Progress of the Law, 1919–1920. Equitable Relief against Torts," 34 HARV. L. REV.